

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 866, FOOD AND DRUGS ACT.

MISBRANDING OF BOTTLED BEER.

On or about October 10, 1910, The Benwood Brewing Company, of Wheeling, W. Va., shipped from the State of West Virginia into the State of Ohio a consignment of 984 bottles of beer, labeled as follows: Two, "Washington Brewing Co., Columbus, Ohio;" three "Gambrinus, Columbus, O.;" nine, "N. Schlee & Son, Columbus, Ohio;" forty-seven, "Columbus Brewing Co., Columbus, Ohio;" sixty-six, "Franklin Brewing Co., Columbus, Ohio;" eight hundred and fifty-seven, "Hoster, Columbus." Samples from said shipment were procured and examined by the Bureau of Chemistry, United States Department of Agriculture, and it was found that said beer was manufactured and produced by The Benwood Brewing Company, of Wheeling, W. Va. As it appeared from the said examination that the product was misbranded within the meaning of the Food and Drugs Act of June 30, 1906, and liable to seizure under section 10 of said act, the Secretary of Agriculture reported the facts to the United States attorney for the Southern District of Ohio.

In due course a libel was filed in the District Court of the United States for the said district, charging the above shipment and alleging that the product so shipped was misbranded in the following particulars: (1) In that the labels, marks, and brands upon said bottles represented that said beer was produced by various brewing concerns above mentioned in the city of Columbus and State of Ohio, when in truth and in fact said beer was not manufactured and produced in the city of Columbus nor in the State of Ohio nor by said brewing concerns, but was manufactured and produced by the Benwood Brewing Company in the city of Wheeling and State of West Virginia; (2) in that said beer contained in the bottles bearing the aforesaid labels was an imitation of and offered for sale under the distinctive name of another article of food, to wit, under the name applied to the beers

manufactured and produced by the aforesaid brewing concerns in the city of Columbus and State of Ohio, when in truth and in fact the said beer was not manufactured and produced by the said brewing concerns, nor any of them, nor in the city of Columbus, nor in the State of Ohio, but was manufactured by the Benwood Brewing Company, in the city of Wheeling, and State of West Virginia; (3) in that said beer was labeled and branded so as to deceive and mislead the purchaser, because the aforesaid labels were calculated and intended to and did induce and create the impression and belief in the mind of the purchaser thereof that said beer was manufactured, produced, and bottled by the several brewing concerns above mentioned in the city of Columbus, State of Ohio, when in truth and in fact said beer was not manufactured, produced, and bottled by the said brewing concerns, but was manufactured, produced, and bottled by the Benwood Brewing Company in the city of Wheeling, State of West Virginia. The libel further prayed condemnation and forfeiture of the property above described, and process against all claimants thereto.

Thereupon The Hoster-Columbus Associated Breweries Company filed an intervening petition alleging ownership of the following described portion of the property seized: 9 bottles labeled "N. Schlee & Son, Columbus, Ohio;" 47 bottles labeled "Columbus Brewing Co., Columbus, Ohio;" 857 bottles labeled "Hoster-Columbus;" and consenting that the contents of said bottles be destroyed and disposed of according to law, and praying that said bottles when empty might be returned to it, and that the other bottles belonging to other breweries be also restored to said petitioner so that according to the established custom of the trade said bottles might be delivered to such other breweries as might be the owners thereof.

The case came on for hearing and the court being fully informed in the premises rendered a decree ordering that the beer be condemned as prayed in the libel, in view of the fact that it was impossible to repack and rebrand the same so that it might be sold lawfully, that such of said bottles as were owned by said Hoster-Columbus Associated Breweries Company be delivered to said company for their proper use, and that the bottles belonging to the other companies named above be delivered to said Hoster-Columbus Associated Breweries Company to be disposed of by said company in accordance with the custom and practice as set forth in its intervening petition filed herein. Said decree was formally executed by the marshal.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

W. M. HAYS,
Acting Secretary of Agriculture.

WASHINGTON, D. C., *May 5, 1911.*